

Chapter highlights

- **Purpose:** This chapter defines sole source IT procurements and outlines sole source policies.
- **Key points:**
 - Sole source Information technology (IT) procurements are defined as procurements where there is **only** one solution to meet an agency's IT needs, and only one supplier can provide the technology goods and/or services required for the solution.
 - Proprietary IT solutions do not justify a sole source procurement. Proprietary procurements are defined as those in which there is only one solution available to meet an agency's IT needs; however, multiple suppliers may provide the technology goods and/or services required for the solution.

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16.0 Introduction

Sole source information technology (IT) procurements are defined as procurements where only one solution exists to meet an agency's IT needs and only one supplier can provide the technology and/or services required for the solution. Competition is not available for sole source procurements. When a sole source procurement is contemplated for a technology purchase and the estimated total amount of the purchase exceeds an agency's delegated purchase authority, the Sole Source Justification Form (see Appendix A) should be signed by the agency head or designee and submitted to VITA for approval at: scminfo@vita.virginia.gov prior to the agency taking any further action.

16.1 Sole source procurement justifications

As fair and open competition is the preeminent consideration in Commonwealth procurement, any agency making a sole source procurement must clearly and convincingly demonstrate the need for doing so. Examples of circumstances which could necessitate sole source procurement for technology goods or services include:

- Products that are unique and possess specific characteristics or have a unique capability to provide a particular function and such products are only available from only one supplier.
- A law or grant requires a single source.
- Recovery from a disaster or emergency.

Examples of circumstances which **do not** justify a sole source procurement for technology goods or services include:

- Single supplier's capability to deliver in the least amount of time.
- Small purchase procurements under \$10,000.
- Proprietary solutions. Proprietary procurements are defined as those in which there is only one solution available to meet an agency's needs; however, multiple suppliers may provide the technology goods and/or services required for the solution. Proprietary solutions exist when the compatibility of equipment, replacement parts or service is the paramount consideration, but they should be procured using competition.

16.2 Sole source procurement process requirements

Below is a table of process requirements for sole source procurements of varying budget levels:

Sole source procurement	Condition	Process
Any amount	Off-premise (cloud hosted) solution	<u>Enterprise Cloud Oversight Services (ECOS) process</u> . Regardless of the amount, if the Sole Source Procurement involves an off-premise (cloud hosted) solution, agencies must follow the <u>ECOS Process</u> and <u>Third Party Policy Workflow</u> . A Security Assessment of the cloud service will need to be completed by the supplier and approved by ECOS, via a work request 1-003, and special Cloud Services Terms & Conditions must be included in the contract prior to award.
Under \$10,000	Not applicable	Not applicable
\$10,000 To \$250,000	Must be a Non-Infrastructure Related Procurement Agency/Institution	Must be approved in advance by the agency head or designee. Complete a Sole Source Procurement Approval Request Form (see Appendix A), signed by the agency head or designee.

Sole source procurement	Condition	Process
\$250,000 or more	Any agency IT project that (has a total estimated cost of \$1 million or more has been designated a major information technology project by the Chief Information Officer (CIO). (See § 2.2-2006 of the <i>Code of Virginia</i> .)	<p>Complete the Sole Source form and attach to your Procurement Governance Request (PGR). For more See here: https://www.vita.virginia.gov/supply-chain/scm-policiesforms/summary-of-vitas-procurement-delegation/</p> <p>The Chief Information Officer (CIO) must approve the sole source procurement prior to the commencement of the actual procurement.</p>

16.3 How to conduct sole source procurements

The Virginia Public Procurement Act, [§ 2.2-4303\(E\)](#), requires the following steps in conducting sole source procurements:

- Prepare a written determination that there is only one source practicably available. Appendix A, Sole Source Procurement Approval Request Form, fulfills this requirement.
- Conduct determination of Price Reasonableness.
- Issue a written award notice that states:
 - only one source is practicably available
 - what is to be procured
 - name of selected supplier
 - date the contract was or will be awarded
- Post the award notice on [eVA](#). The notice may also be published in a newspaper of general circulation on the day the public body awards the contract. Posting on [eVA](#) is required by all state public bodies. Local public bodies are encouraged to utilize [eVA](#).

Sole source IT procurements that include a renewal provision, for which approval for multi- years was originally obtained, do not need to be re-approved until expiration of that renewal term.

16.4 Sole source procurements resulting in “high risk contracts”

Section [2.2-4303.01](#) of the *Code of Virginia* defines “high risk contracts” and outlines review and evaluation criteria for all public procurements which may result in a high risk contract.

Any IT procurement that is anticipated to result in a high risk contract must be reviewed by VITA and the Office of the Attorney General (OAG) prior to contract award. Reviews of the high risk contracts will be conducted within 30 business days and evaluate the following:

- The contract’s compliance with state law and policy.
- The inclusion of distinct and measurable supplier performance metrics
 - With clear enforcement provisions, including clearly outlines penalties and

- incentives, to be sued in the event that contract performance measures are not met.
- The legality and appropriateness of the contract terms and conditions.

Agencies are required to contact VITA's Supply Chain Management Division (SCM) at: scminfo@vita.virginia.gov during the contract preparation stage for assistance with preparing and evaluating the proposed contract's terms and conditions.

VITA's High Risk Contracts Policy can be found on our website, accessible through the following link: <https://www.vita.virginia.gov/supply-chain/scm-policies-forms/scm-policies/>. Also see [Chapter 25](#) of this manual, "IT Contract Formation".

16.5 How to determine price reasonableness

The agency should conduct careful research when conducting a sole source procurement to determine the fair market price of the IT good or service being procured and document the findings. To substantiate price reasonableness, review previous prices paid by other consumers and observe whether the market has remained stable or fluctuated for that particular IT or telecommunications good or service. Complete a Price Reasonableness Determination Form (see Appendix B) for the procurement file. Also see [Chapter 9](#) of this manual, "Determining Price Reasonableness".

16.6 How to negotiate sole source contracts

In sole source procurements, a contract is negotiated and awarded without competitive sealed bidding or competitive negotiation. Therefore, it is the agency's responsibility to negotiate a contract that is in the Commonwealth's best interest. To be successful, the agency should have extensive knowledge of the market, the supplier's position in the market and substantiated price reasonableness information for the technology or service being procured. Written documentation of the negotiations shall be included in the procurement file incorporating the Price Reasonableness Determination Form found in Appendix B.

16.7 How to complete the sole source procurement file

An executed contract and/or [eVA](#)-issue purchase order is required for sole source purchases. The procurement file for sole source procurements over \$10,000 should contain the following documentation to support the sole source contract award:

- Written quote from offeror
- Sole Source Procurement Approval Request Form (Appendix A)
- Price Reasonableness Determination Form (Appendix B)
- Written negotiations documentation
- Written award notice
- Documentation of public posting of sole source award in a newspaper of general circulation, if any.
- Copy of [eVA](#) posting.
- Executed contract, if applicable, and copy of [eVA](#) purchase order.

Appendix A
Sole Source Procurement Approval Request Form

This form is available on VITA SCM's website at the following URL:
<https://www.vita.virginia.gov/supply-chain/scm-policies-forms/>

Appendix B

Price Reasonableness Determination Form

This form is available on VITA SCM's website at the following URL:

https://www.vita.virginia.gov/media/vitavirginiagov/supply-chain/docs/Price_Reasonableness_Determination_Form.doc